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| 09/757,362      | 01/08/2001  | Howard C. Chasteen   | 1604-373            | 6627             |

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT PAPER NUMBER

3727

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/757,362

Applicant(s)

CHASTEEN ET AL.

Examiner

Robin Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 January 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because the shading of figure 1 makes it difficult to discern the features being depicted. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Specification*

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical, or inventive, feature of the claimed instant invention. It is suggested the venting feature also be included in the title.

3. The abstract of the disclosure is objected to because it contains the objectionable phrase "is provided herein". Correction is required. See MPEP § 608.01(b).

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "a lip elevated at least about 0.030 inches from said upper surface" (claim 10) and "said score line having a surface area no greater than about 0.1503 inches" (claim 14).

### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1,4,7-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aomatsu (JP 11-49209).

Art Unit: 3727

The lid is disclosed for a PET bottle, but is capable of being applied to a beverage can. The disclosure is silent regarding specific dimensions of the small opening and the vent opening and the type of material used.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a metallic material for the beverage can end, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the small opening with a diameter no greater than about 0.4375 inches and to elevate the pull ring at least about 0.030 inches from the upper surface, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

7. Claims 1,2,4,6-12,14,15,17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tashiro et al. (JP 2000-226029) in view of Aomatsu.

Tashiro teaches a can end having a small opening for receiving a straw, the small opening having a maximum length of 10mm and allowing venting of the can while the straw is therein. Tashiro does not teach the small opening is substantially circular nor specific dimensions of the other can end portions.

Aomatsu teaches it is known to provide a can end with a substantially circular opening for receiving a straw therein and a small vent opening adjacent the circular opening.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a substantially circular opening for receiving a straw therein and a small vent opening adjacent the circular opening to the can end of Aomatsu. Doing so is an obvious matter of design choice which inherently provides a more spill-resistant can end.

Art Unit: 3727

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the small opening with a diameter no greater than about 0.4375 inches, the venting area of at least 0.004 inches, to elevate the pull ring at least about 0.030 inches from the upper surface, and a score line surface are no greater and about 0.1503 inches, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

8. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Hanson (US 4,184,605)

Tashiro as modified teaches the claimed can end except for a bead inhibiting detachment of a tab from the can end.

Hanson teaches it is known to provide a bead proximate the hinge and/or termination point of the score line to inhibit detachment of a tab from the can end.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of provide a bead proximate the hinge and/or termination point of the score line. Doing so inhibits detachment of a tab from the can end upon opening.

9. Claims 13, 16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 14 above, and further in view of Forbes (US 4,923,083).

Tashiro as modified teaches the claimed can end except for a reinforcing bead providing a shroud the leading edge of the circular opening.

Forbes teaches it is known to provide a reinforcing bead providing a shroud the leading edge of a circular opening of a scored can end.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a shroud to the modified can end of Tashiro. Doing so prevents accidental cuts caused by an exposed open score line.

Art Unit: 3727

10. Claims 20 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tashiro in view of Aomatsu and Peterson et al. (US 3,438,578).

It is noted that while the preamble of the claims indicate the claimed invention is drawn to a can end, certain portions of the claims positively recite the straw. Thus, the claims are considered to be drawn to the combination of the can end and the straw.

Tashiro teaches a can end having a small opening for receiving a straw, the small opening having a maximum length of 10mm and allowing venting of the can while the straw is therein. Tashiro does not teach the small opening is substantially circular nor specific dimensions of the other can end portions.

Aomatsu teaches it is known to provide a can end with a substantially circular opening for receiving a straw therein and a small vent opening adjacent the circular opening.

Peterson teaches it is known to use a corrugated straw for drinking a beverage.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a substantially circular opening for receiving a straw therein and a small vent opening adjacent the circular opening to the can end of Aomatsu and to provided a corrugated straw therein. Doing so is an obvious matter of design choice which inherently provides a more spill-resistant can end having a straw for drinking the beverage without one's lips contacting the can end.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the small opening with a diameter no greater than about 0.4375 inches and the venting area of at least 0.004 inches, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

11. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 20 above, and further in view of Hanson (US 4,184,605)

Art Unit: 3727

Tashiro as modified teaches the claimed can end except for a bead inhibiting detachment of a tab from the can end.

Hanson teaches it is known to provide a bead proximate the hinge and/or termination point of the score line to inhibit detachment of a tab from the can end.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of provide a bead proximate the hinge and/or termination point of the score line. Doing so inhibits detachment of a tab from the can end upon opening.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various can ends are cited for their disclosures.

13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

14. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Art Unit: 3727


15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
February 21, 2003

  
Robin A. Hylton  
Patent Examiner  
GAU 3727